

BEFORE THE DIVISION OF INSURANCE

STATE OF COLORADO

Order No. O-12-053

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**FINAL AGENCY ORDER**

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IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF AVIVA LIFE  
AND ANNUITY COMPANY

Respondent

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THIS MATTER comes before the Colorado Commissioner of Insurance ("Commissioner") as a result of a market conduct examination ("MCE") conducted by the Colorado Division of Insurance ("Division") of Aviva Life and Annuity Company ("Respondent"), pursuant to §§ 10-1-203, 204, and 205, as well as § 10-3-1106, C.R.S.

The Commissioner has fully considered and reviewed the Verified MCE Report ("Report") dated September 20, 2011, the written submissions and rebuttals provided October 19, 2011, by Respondent in response to the Report, and the recommendations of staff.

The Report covers the examination period of January 1, 2009, through December 31, 2009.

The Commissioner makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. At all relevant times during the examination, the Respondent was licensed by the Division to conduct business as a life insurer in the State of Colorado.
2. On September 13, 2011, in accordance with §§ 10-1-201, 10-1-203, 10-1-204, and 10-1-205, as well as § 10-3-1106, C.R.S., the Division completed an MCE of the Respondent. The period of examination was January 1, 2009, through December 31, 2009.
3. In conducting the MCE, the examiners observed those guidelines and procedures set forth in the 2010 Market Regulation Handbook adopted by the National Association of Insurance Commissioners.
4. The MCE was completed on September 13, 2011. Pursuant to § 10-1-205(2) the market conduct examiners prepared the Report, which the Examiner-In-Charge timely

filed with the Division, under oath, on September 20, 2011. The Report was subsequently timely transmitted to Respondent on September 20, 2011.

5. On September 20, 2011, the Division provided the Respondent with written notification that it was afforded a right to file, within thirty (30) days, written submissions or rebuttals with respect to any matter contained in the Report.
6. Pursuant to § 10-1-205(1), C.R.S., the Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons who were examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.
7. On October 19, 2011, Respondent timely filed written submissions and rebuttals to the Report as provided for at § 10-1-205(2), C.R.S.
8. The Commissioner has fully considered and reviewed the Report, Respondent's October 19, 2011, submissions and rebuttals to the Report, and the recommendations of staff.
9. The MCE has proceeded under the substantive terms, authority and procedures set forth at §§ 10-1-203, 204 and 205, C.R.S., as well as § 10-3-1106, C.R.S.
10. This MCE was not conducted as an informal investigation of consumer complaints.
11. This MCE did not proceed and was not conducted as a targeted on-site examination pursuant to § 10-1-212, C.R.S.

### **CONCLUSIONS OF LAW AND ORDER**

12. Pursuant to § 10-1-205(3)(a), C.R.S., the Commissioner adopts the Report as modified ("Modified Report"). The Commissioner has modified the Report as follows: Issue E3 was removed from the Report. Issue E4 was renumbered to E3. Issue G1 was removed from the Report. Original Issue G2 was renumbered to G1. Issue E1 has been modified to reflect a reduction in the number of exceptions. Current Issue G2 has been modified to reflect a reduction in the number of exceptions and the issue has been restated.
13. The Commissioner finds the Respondent operated in violation of Colorado insurance law and hereby orders the Respondent to take necessary and appropriate action, as set forth herein, to cure such violations.
14. The Commissioner considered the options available under § 10-1-205(3)(b) and (c), C.R.S. After such consideration the Commissioner did not reject the Report or direct the examiners to reopen the examination for the purposes of obtaining additional data,



documentation, or information, or to refile the Report pursuant to subsection (1) of §10-1-205, C.R.S. The Commissioner finds an investigatory hearing, pursuant to §10-1-205(3)(c), C.R.S., for the purposes of obtaining additional documentation, data, information, and testimony, is not warranted.

15. A copy of the Modified Report is attached to the Final Agency Order and is incorporated herein. The September 20, 2011, Report provided Respondent with the opportunity to show cause as to why it should not be found in violation of the Colorado insurance laws and/or regulations for all issues identified below. Respondent provided its submission and rebuttals on October 19, 2011. The Respondent was required to cure the violations set forth below in the time frame and manner set forth below.
16. Issue E1: Failure of Aviva's application forms to include a fraud statement that is substantially the same as the statement required by Colorado insurance law. This failure constitutes a violation of § 10-1-128, C.R.S. The Respondent was required to provide written evidence to the Division that it has implemented procedures and revised its forms to ensure that its applications, policies or claim forms, whether printed or electronic, contain the fraud warning mandated by Colorado insurance law. The Division's records indicate the Respondent has complied with the corrective actions ordered for this issue.
17. Issue E2: Use of non-complying authorization forms regarding disclosure of nonpublic personal health information. This failure constitutes a violation of Colorado Insurance Regulation 6-4-1. The Respondent was required to provide written evidence to the Division that it has implemented procedures and revised its forms to ensure that all "Authorization and Acknowledgement" disclosures comply with the requirements of Colorado insurance law. The Division's records indicate the Respondent has complied with the corrective actions ordered for this issue.
18. Issue E3: Use, in some instances, of a non-complying premium payment provision. This failure constitutes a violation of § 10-7-102, C.R.S. The Respondent was required to provide written evidence to the Division that it has modified the premium payment clause of all life insurance policies to state that premiums shall be paid in advance, either at the home office of the company or to an agent of the company as required by Colorado insurance law. The Division's records indicate the Respondent has complied with the corrective actions ordered for this issue.
19. Issue G1: Failure, in some instances, to provide notification and/or timely notification to the contract owner of the right to receive current policy information upon replacement of an existing contract. This failure constitutes a violation of Colorado Insurance Regulation 4-1-4. The Respondent was required to provide written evidence to the Division that it has modified its procedures or taken other action(s) to ensure that its replacement notification is in compliance with Colorado insurance law. The Division's records indicate the Respondent has complied with the corrective actions

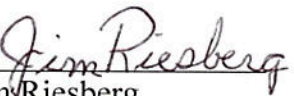
ordered for this issue.

20. Issue G2: Failure, in some instances, to provide notification of replacement to existing insurers. This failure constitutes a violation of Colorado Insurance Regulation 4-1-4. The Respondent was required to provide written evidence to the Division that it has modified its procedures and taken all other actions necessary to ensure compliance of its replacement notification procedures with Colorado insurance law. The Division's records indicate the Respondent has complied with the corrective actions ordered for this issue.
21. The issues and violations described in paragraphs 16 through 20 above are grounds for penalties to be levied pursuant to § 10-1-205(3)(d), C.R.S. The Commissioner has ordered a civil penalty in the amount of forty-six thousand and no/100 dollars (\$46,000.00) for the cited violations of Colorado law. However, the Commissioner hereby waives \$23,000 of the \$46,000 civil penalty based on documentation provided by the Respondent confirming that all required corrective actions were completed prior to issuance of the Final Agency Order. The remaining \$23,000.00 penalty shall be assessed a surcharge of 10% of the penalty amount up to a maximum of \$7,500.00, pursuant to 24-34-108, C.R.S., for a total balance due of twenty-five thousand three hundred dollars (\$25,300.00). The surcharge shall be used to fund the development, implementation and maintenance of a consumer outreach and education program. The penalty and surcharge shall be due to the Division no later than thirty (30) days from the date of this Final Agency Order.
22. Pursuant to § 10-1-205(4)(a), C.R.S., within sixty (60) days of the date of this Final Agency Order, the Respondent shall file affidavits executed by each of its directors stating under oath that they have received a copy of the Report, as modified and adopted by this Final Agency Order, dated November 18, 2011.
23. This Final Agency Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Final Agency Order, or occurring before or after the examination period. Failure by the Respondent to comply with the terms of this Final Agency Order may result in additional actions, penalties and sanctions, as provided for by law. Copies of the Modified Report and this Final Agency Order will be made available to the public no earlier than thirty (30) days after the date of this Final Agency Order, subject to the requirements of § 10-1-205, C.R.S.
24. Pursuant to § 10-1-205(4)(a), C.R.S., this Final Agency Order shall be considered a final agency decision. Review of such decision may be sought in the District Court in and for the City and County of Denver and shall be governed by the "State Administrative Procedure Act," Article 4 of Title 24, C.R.S.



25. Pursuant to § 10-1-205(4)(e), C.R.S., the civil penalty assessed in this Final Agency Order may be appealed directly to the Colorado Court of Appeals within the applicable time frames of the Colorado Appellate Rules.

**WHEREFORE:** It is hereby ordered that the findings of facts and conclusions of law contained in the Report dated September 20, 2011, subsequently adopted by the commissioner with modifications on November 18, 2011, are hereby filed and made an official record of this office, and the within Final Agency Order incorporating the adopted Modified Report is hereby approved and effective this 18<sup>th</sup> day of November, 2011.

  
Jim Riesberg  
Commissioner of Insurance

**CERTIFICATE OF MAILING**

I hereby certify that on the 18<sup>th</sup> day of November, 2011, I caused to be deposited the **FINAL AGENCY ORDER NO. O-12-053 IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF AVIVA LIFE AND ANNUITY COMPANY**, in the United States  
Mail via certified mailing with postage affixed and addressed to:

Mr. Christopher J. Littlefield, CEO  
Aviva Life & Annuity Company  
7700 Mills Civic Parkway  
West Des Moines, IA 50266



Eleanor Patterson  
Market Regulation Administrator  
Division of Insurance